

STATE OF MICHIGAN  
COURT OF APPEALS

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MARK KLAWITER,

Plaintiff-Appellant,

v

BOLHOUSE LAW FIRM,

Defendant-Appellee.

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UNPUBLISHED  
December 10, 2013

No. 312023  
Kent Circuit Court  
LC No. 12-004219-NM

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Plaintiff Mark Klawiter, acting *in propria persona*, appeals by right the trial court's order dismissing his legal malpractice claims. We affirm.

Plaintiff brought this action alleging defendant negligently represented plaintiff's company, Klawiter Heating & Cooling, LLC, in two embezzlement actions the company filed against Steve Rau and Ken VanTuinen. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that the statute of limitations barred plaintiff's legal malpractice claims. The trial court agreed with defendant and dismissed plaintiff's complaint.

We review de novo a trial court's ruling on a motion for summary disposition brought on the basis of the statute of limitations. *Trentadue v Gorton*, 479 Mich 378, 386; 738 NW2d 664 (2007). "When addressing a motion under subrule C(7), the trial court must accept as true the allegations of the complaint unless contradicted by the parties' documentary submissions." *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 443; 761 NW2d 846 (2008). Absent a disputed question of material fact, the determination whether a cause of action was barred by a statute of limitation is a question of law that we review de novo. *Trentadue*, 479 Mich at 386.

A client's claim against his attorney for professional malpractice accrues on the date that the attorney "discontinues serving the plaintiff in a professional . . . capacity as to the matters out of which the claim for malpractice arose." MCL 600.5838(1). As relevant to this case, plaintiff's action for malpractice is time barred unless it is brought within two years from the date the claim accrued, i.e., the date that services were discontinued. MCL 600.5805(6). With respect to the Rau matter, the record supports that the date of defendant's last day of professional

service was September 21, 2008, the date the case was dismissed. With respect to the VanTuinen matter, the record supports that defendant's last day of professional service was July 28, 2008, the date judgment was entered.<sup>1</sup> Plaintiff filed his legal malpractice action on May 8, 2012, after the two-year statute of limitations had run on both claims. MCL 600.5838(1); MCL 600.5805(6). Consequently, plaintiff's malpractice action was barred by the statute of limitations. MCL 600.5805(6); MCL 600.5838b. Accordingly, as a matter of law, the trial court properly granted defendant summary disposition. MCR 2.116(C)(7).

Plaintiff argues that he was entitled to a trial by jury to determine if the statute of limitations had expired before he filed his complaint; however, in the absence of disputed material facts, whether a plaintiff's cause of action is barred by the statute of limitations is a question of law to be determined by the court. *Boyle v Gen Motors Corp*, 468 Mich 226, 229-230; 661 NW2d 557 (2003). Because there was not a disputed question of material fact with respect to the expiration of the statute of limitations, plaintiff's argument is without merit.

Although plaintiff also argues that the trial court erred by hearing defendant's motion for summary disposition while he was not present, he did not move the trial court for adjournment, nor did the parties stipulate to an adjournment in accordance with MCR 2.503(B). Accordingly, we find that the trial court did not err.

Finally, we have reviewed plaintiff's other claims of error related to the trial court's order of dismissal and find that they have no merit.

We affirm.

/s/ David H. Sawyer  
/s/ Jane E. Markey  
/s/ Cynthia Diane Stephens

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<sup>1</sup> The record does not reflect the exact date that defendant and Klawiter Heating & Cooling's attorney-client relationship ended. But plaintiff does not allege and no evidence supports that defendant undertook any further actions in the Rau matter after the case was dismissed or any further actions in the VanTuinen matter after the judgment was entered.